

**DEPARTMENT THREE
JUDGE HARRY S. KINNICUTT
707-207-7303
TENTATIVE RULINGS SCHEDULED FOR
THURSDAY, JUNE 30, 2016**

**PLEVNIK v. LAGOMARSINO
Case No. FCS045117**

Motion by Defendant for Summary Judgment

TENTATIVE RULING

The motion here sought summary judgment, not summary adjudication of causes of action. Thus, it must defeat all alleged causes of action to be granted.

Plaintiff's complaint alleged causes of action for premises liability, negligence, and failure to provide Worker's Compensation Insurance.

As to premises liability and negligence:

The owner or possessor of land owes to an invitee a duty of due care in activities, to correct or warn against known dangerous conditions, and to make a reasonable inspection to discover defects not known. 6 Witkin, Summary of California Law (10th ed. 2005) Torts, §1118, p. 448.

Although Defendant lent Plaintiff his chainsaw and his ladder, there was nothing wrong with either of those items. [Undisputed Facts 6 and 8, and evidence cited in support thereof]. It was also Plaintiff, and not Defendant, who decided where to position the ladder, and where to make the cut on the branch. [Undisputed Facts 15-17, and evidence cited in support thereof].

A homeowner who employs a tree trimmer is exempt from Cal-OSHA regulations. Fernandez v. Lawson (2003) 31 Cal.4th 31; Rosas v. Dishong (1998) 67 Cal.App.4th 815. Therefore, the regulations cannot be used to establish a basis for liability.

Further, the injury resulted when a tree branch cut by Plaintiff touched the ground, bounced back, and struck the side of the ladder, causing Plaintiff to fall. [Undisputed Fact 18, and evidence cited in support thereof]. It therefore did not occur from a dangerous condition of the property of which Plaintiff was ignorant, and which Defendant knew or through reasonable inspection should have known.

On the cause of action for failure to secure worker's compensation insurance:

In general, if an employer required by law to secure worker's compensation for employees fails to do so, an injured employee can sue the employer for damages (if the employer was negligent), and also may seek proceed before the Workers' Compensation Appeals Board ("WCAB") for worker's compensation benefits. 2 Witkin, Summary of California Law (10th ed. 2005) Workers' Compensation, §52, citing Labor Code §3706 [damages] and §3715(a) [worker's compensation].

Labor Code §3715(a) on its face restricts that claim for worker's compensation to pursuing a claim with the WCAB, and does not authorize a civil cause of action.

Thus, even assuming that Plaintiff's status as a volunteer on this tree-trimming project does not rule out the possibility that he acted as an "employee" of Defendant, and that Plaintiff may not have had a tree trimming license for work that under Business & Professions Code §7026.1 required a license, this cause of action is improper. To the extent Plaintiff may have a remedy, it lies not with the civil court, but with the WCAB. Rosas, supra, 67 Cal.App.4th 815 [unlicensed tree trimmer was deemed an employee of the homeowners who hired him, entitled to seek worker's compensation benefits with the WCAB against the homeowners and/or their homeowners' comprehensive liability policy, which is required by law to include worker's compensation coverage].

As there is no basis for potential liability on the part of Defendant, summary judgment is hereby granted, to the entirety of Plaintiff's action against Defendant, but without prejudice to Plaintiff's pursuit of worker's compensation benefits against Defendant and/or his homeowner's liability insurer, through the WCAB.

Defendant is to submit both a proposed order granting the summary judgment motion reflecting this ruling, and a proposed judgment. Edmon, Rylaarsdam & Karnow (Weil & Brown), Civil Procedure Before Trial, §10:330, p. 10-136.